Of this amount, only the pre-trial loss from June 29, 1982 the day of the accident to April 25, 1984 the day of judgment amounting to $16,800/- shall bear interest at the rate of 3% per annum.

We apportion to the widow about two-thirds of the amount because she has to look after and support the three children and provide them with education and other necessities until they reach the age of majority. We order the share of the children to be deposited with the Public Trustee until they reach the age of majority, with liberty to apply.

With regard to the claim by the first respondent for which general and special damages have been agreed at $9,000/- and $2,120/- respectively based on 100% liability, the amount should be adjusted according to his entitlement of only 30% of the said amount with interest at the usual rate for general and special damages.

In passing, we would like to confirm the view of the learned Judge that the dependants of the deceased, *viz.*, third to the eighth plaintiffs are entitled to the whole amount of damages although the liability has been apportioned between the first appellant and the first respondent. This conclusion is in accordance with the fundamental principle in the law of damages where the injuries committed on the plaintiff by more than one tortfeasor is one and indivisible. The principle is enunciated by Devlin L.J. in *Dingle* v. *Associated Newspapers Ltd.*[8] and adopted in *Oli Mohamed* v. *Keith Murphy & Anor.*[9] dealing with a motor accident claim in Singapore. The respondents are aware of this principle and have pleaded at paragraph 9 of the Statement of Defence that they will seek indemnity and contribution from the first respondent to the extent of the apportionment by the Court of liability between the defendants and the first plaintiff in the event that the defendants are found liable in respect of the second to the eighth plaintiffs respectively. Section 10(1) (c) and section 12(3) of the Civil Law Act 1956 appear to be relevant. Further, the point was not included in the grounds of appeal and was not argued before us.

The appeal is allowed with costs and the cross-appeal by the first respondent is dismissed with costs. The deposit is to be refunded to the appellants.

Appeal allowed;
Cross-appeal dismissed.

Solicitors: *Lawrence Dhillon & Associates Syarikat M. Segaram.*

PUBLIC PROSECUTOR v. RAYMOND CHIA KIM CHWEE & ANOR. ZAINAL BIN HJ. ALI v. PUBLIC PROSECUTOR

[S.C. (Salleh Abas L.P., Wan Suleiman & Hashim Yeop A. Sani S.C. JJ.) August 22, 1983 & June 7, 1985]

[Kuala Lumpur – Federal Court Criminal Reference No. 2 of 1983]

Criminal Law and Procedure – Documents – Application to inspect and take copies of – Whether accused entitled to inspect and take copies of – Whether court can order prosecution to supply copies of – Whether appeal lies from order of court – Charges – Revision – Criminal Procedure Code (F.M.S. Cap. 6), ss. 51, 152, 153, 154, 302 & 316

In this case the respondents had been jointly charged in the Sessions Court for the offence of forgery by using dishonestly a letter of credit for the amount of $2.4 million with a number of specified forged documents. The respondents applied for the inspection of the various documents in the possession of the prosecution including the five documents stated in the charge. In the case of the first respondent his application was in general terms. The second respondent applied for copies of all specified and unspecified documents including the cautioned statement and first information report. They did not indicate under what provisions of the law the orders could be made. The learned President of the Sessions Court did not allow the applications *in toto* but made an order confined only to the inspection of the documents specifically referred to in the charge and documents removed for the possession of the respondents. The Public Prosecutor appealed. The learned Judge of the High Court ([1985] 2 M.L.J. 63) held that the order made by the learned President was not a procedural ruling and that it was a final order and therefore appealable. He held that the respondent's applications were not properly made under section 51(i) of the Criminal Procedure Code and the order of the learned President must be set aside. However he exercised his power of revision and allowed the first part of the order to remain on the ground that the respondents were entitled to further and better particulars of the charge to enable them to prepare their defence and give instructions to their counsel. He therefore ordered that photostat copies of the documents specifically referred to in the charge be supplied by the Public Prosecutor to the respondents. The respondents and the Public Prosecutor in separate notices of motion posed five questions for the opinion of the Supreme Court. The questions were:

(1) Does an appeal lie to the High Court from an order made by a Subordinate Court under section 51 of the Criminal Procedure Code?
(2) Does a person accused of an offence before a Subordinate Court have a right to apply for and obtain an Order under section 51 of the Criminal Procedure Code to inspect and take copies of documents in the possession of the Respondent in connection with or in respect of such offence?
(3) If the answer to question (2) is in the affirmative, then what are the documents which the accused is entitled to inspect and take copies of?
(4) If the answer to question (2) is in the negative, then:–
(a) does an accused person have a right to inspect and take copies of such documents as aforesaid? and
(b) what is the nature and extent of such right?

(5) Having ruled that section 51 of the Criminal Procedure Code is not applicable, will it be right in law for the learned Judge to order the prosecution to supply to the defence before trial photocopies of the documents referred to in the charge, the contents of which form part of the evidence for the prosecution?

Held: (1) a decision or order to issue a summons under section 51 of the Criminal Procedure Code is a final order in the sense that it is final in its effect and therefore appealable under section 307 of the Criminal Procedure Code;

(2) where the court is asked to exercise its discretion under section 51 of the Criminal Procedure Code before the commencement of trial the court must have regard to the provisions of sections 152, 153 and 154 of the Criminal Procedure Code relating to the framing of the charge. There is clearly a specific duty imposed on the prosecution to particularise the charge sufficiently so as to give adequate notice to the accused;

(3) the entitlement of the accused under section 51 of the Code to any document or copies of documents or other material in the possession of the prosecution is entirely at the discretion of the court having regard to the justice of the case. The discretion should not however be exercised so as to enable the accused to gain access to materials before the trial as in the case of pretrial discovery and inspection of documents in a civil proceeding;

(4) the accused in a criminal trial should have sufficient notice of what is alleged against him so as to enable him to prepare his defence. So long as that requirement is satisfied the law is satisfied;

(5) where the application under section 51(i) of the Code is made in the course of trial the rule of relevancy must be strictly enforced;

(6) in this case the order made by the learned Judge was not correct; it was neither an alteration nor a reversal of the order made by the learned President and therefore not authorised under section 316(c) of the Code. The order of the learned Judge to produce the documents was not a proper exercise of his revisionary powers.

Cases referred to:

(1) *Mohamed Amin Bros.* v. *Government of India* A.I.R. 1950 F.C. 77.
(2) *Public Prosecutor* v. *Hoo Chang Chwen* [1962] M.L.J. 284.
(3) *Public Prosecutor* v. *R.K. Menon & Anor* [1978] 2 M.L.J. 152.
(4) *Syed Abu Bakar bin Ahmad* v. *Public Prosecutor* [1982] 2 M.L.J. 186, 187.
(5) *Public Prosecutor* v. *Teoh Choon Teck* [1963] M.L.J. 34.
(6) *Haji Abdul Ghani* v. *Public Prosecutor* [1980] 2 M.L.J. 196.
(7) *Anthony Gomez* v. *Ketua Polis Daerah, Kuantan* [1977] 2 M.L.J. 24.
(8) *Khoo Siew Bee & Anor* v. *Ketua Polis, Kuala Lumpur* [1979] 2 M.L.J. 49.
(9) *Ganga Ram* v. *Habib Ullah & Anor* A.I.R. 1936 All 212.

SUPREME COURT.

Mohtar Abdullah (Deputy Public Prosecutor) for the Public Prosecutor.

G. Sri Ram (*V. Balasingam & T. Dana* with him) for the respondents.

Cur. Adv. Vult.

Hashim Yeop A. Sani S.C.J. (delivering the judgment of the Court): Five questions were posed before us in two separate Notices of Motion – one from the Public Prosecutor and four from Zainal bin Hj. Ali in the other Notice of Motion. The questions are:–

(1) Does an appeal lie to the High Court from an order made by a Subordinate Court under section 51 of the Criminal Procedure Code?

(2) Does a person accused of an offence before a Subordinate Court have a right to apply for and obtain an Order under section 51 of the Criminal Procedure Code to inspect and take copies of documents in the possession of the Respondent in connection with or in respect of such offence?

(3) If the answer to question (2) is in the affirmative, then what are the documents which the accused is entitled to inspect and take copies of?

(4) If the answer to question (2) is in the negative, then:–

(a) does an accused person have a right to inspect and take copies of such documents as aforesaid?
and
(b) what is the nature and extent of such right?

(5) Having ruled that section 51 of the Criminal Procedure Code is not applicable, will it be right in law for the learned Judge to order the prosecution to supply to the defence before trial photocopies of the documents referred to in the charge, the contents of which form part of the evidence for the prosecution?

Question No. (5) is the Public Prosecutor's question.

For convenience section 51 of the Criminal Procedure Code is reproduced which reads as follows:–

"51.(i) Whenever any Court or police officer making a police investigation considers that the production of any property or document is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer such Court may issue a summons or such officer a written order to the person in whose possession or power such property or document is believed to be requiring him to attend and produce it or to produce it at the time and place stated in the summons or order.

(ii) Any person required under this section merely to produce any property or document shall be deemed to have complied with the requisition if he causes such property or document to be produced instead of attending personally to produce the same.

(iii) Nothing in this section shall be deemed to affect the provisions of any law relating to evidence for the time being in force or to apply to any postal article, telegram or other document in the custody of the postal or telegraph authorities."

With regard to the first question, under section 307(i) of the Criminal Procedure Code any person dissatisfied with any judgment, sentence or order pronounced by any Magistrate's Court in a criminal case to which he is a party may appeal to the High Court against any such judgment, sentence or order. The word "order" is preceded by the words "judgment" and "sentence". The order must therefore be a final order in the sense that it is final in its effect as in the case of a judgment or a sentence. The test for determining the finality of an order is to see whether the judgment or order finally disposes of the rights of the parties. See some discussion on this point in *Mohamed Amin Bros.* v. *Government of India*[1] in respect of civil suits. The right of a person to ask for a document or other material in a criminal proceeding under section 51 of the Criminal Procedure Code is a right exercisable at the discretion of the Court. Thus a decision or order to issue a summons under section 51 of the Criminal Procedure Code is a final order in the sense that it is final in its effect and therefore appealable under section 307(i) of the Criminal Procedure Code. It is distinguishable from a purely "procedural" ruling as described in *Public Prosecutor* v. *Hoo Chang Chwen*[2] and *Public Prosecutor* v. *R.K. Menon & Anor.*[3] In the former case Rose C.J. of Singapore dealt with an appeal on the admissibility of certain statements and the learned Judge held that the ruling of the Magistrate was a procedural ruling and therefore not an appealable order. In the latter case Ajaib Singh J. also took the view that a ruling on a point of law relating to non-compliance with section 129(i)(b) of the Criminal Procedure Code was a procedural and non-appealable ruling.

We can come now to the second, third and fourth questions which can be dealt with together. The appeal before the learned Judge was against the order made by the learned President in favour of the respondent, Zainal bin Hj. Ali for the Public Prosecutor to deliver to the said respondent documents for his inspection, namely, documents specifically referred to in the charge and also documents removed by the prosecution from the possession of the applicant. The grounds for the appeal were that the application by the respondent did not mention under what law it was made and alternatively if it was made under section 51 of the Criminal Procedure Code the learned President erred in law in allowing the application which purported to be for the purpose of enabling the respondents to prepare their defence when the total effect of the order was to enable the defence to gain access to materials which were evidence by which the prosecution proposed to prove the charge. The learned appellate Judge allowed the appeal but purporting to exercise his revisionary powers made an order allowing the first part of the order of the learned President to remain. The question which also arises is whether the learned Judge was correct to invoke his revisionary powers after the disposal of an appeal under section 316 of the Criminal Procedure Code.

Section 51 of the Criminal Procedure Code is a general provision to be invoked at any stage of an inquiry, investigation or trial or other proceeding under the Code. From the language it is plain that that section enables the Court or police officer (as the case may be) if it or he considers that the production of any document or material is necessary or desirable, to issue a summons (in the case of the Court) or a written order (in the case of the police officer) to the person in whose possession or power the material or document is believed to be requiring such person to attend and produce the material or document at the time and place as stated in the summons or written order. The first thing to note is that the problem posed before this Court arose out of a criminal proceeding for an offence of forgery under sections 467 and 471 of the Penal Code and therefore the Court which must consider whether the production of the material or document asked for is necessary or desirable is the Court before which the trial was pending or in which the trial was proceeding.

The appellate Judge in his judgment said:

"The word person is defined under the Interpretation Act, 1967 to include a body of persons, corporate or unincorporate. Thus, section 51(i) envisages a summons to

be issued by the Court against any person (including the Public Prosecutor) to produce specified documents when it considers that the production of such documents is necessary or desirable for any of the purposes stated in that section. I agree with Seah J. in *Syed Abu Bakar bin Ahmad* v. *Public Prosecutor* ([1983]2 M.L.J. 186, 187) that section 51 should be construed strictly. Although it appears to be so, that section is not intended to enable the defence in a criminal proceeding to ask for discovery of documents or inspection of documents from the prosecution before trial."

Further down in his judgment he also said:

"In the instant case, no summons had been issued, and on the facts no summons could have been issued, as the application was in too general a form in the case of Raymond Chia, and too all-embracing in the case of Zainal. So much so that they were in the nature of interlocutories or discovery of documents for which section 51 is never intended."

We were urged that the vital factor in this reference is the distinction drawn between what is labelled as the "strict" approach taken by Seah J. (as he then was) in *Syed Abu Bakar bin Ahmad*[4] and the apparent "liberal" approach envisaged in *Mallal's* Criminal Procedure where the author said that "anything which may reasonably be regarded as forming part of the evidence in the case may be ordered to be produced and that is the primary object of these provisions" which approach would (it was urged) seem to have found favour with Hepworth J. in *Public Prosecutor* v. *Teoh Choon Teck*[5] and Wan Yahya J. in *Haji Abdul Ghani* v. *Public Prosecutor.*[6] We are of the view however that for practical purposes there is really no such distinction. From the language of the section ("*necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding*") it is quite plain that an application under that section may be made before the commencement of a trial or in the course of a trial. In exercising its discretion under section 51(i) of the Criminal Procedure Code the Court has to consider the justice of the case and at what stage of the proceeding the application is made.

Where the Court is asked to exercise its discretion under section 51 of the Criminal Procedure Code before the commencement of trial the Court must have regard to the provisions of sections 152, 153 and 154 of the Criminal Procedure Code relating to the framing of the charge. There is clearly a specific duty imposed on the prosecution to particularise the charge sufficiently so as to give adequate notice to the accused person. The entitlement of the accused under section 51 of the Criminal Procedure Code to any document or copies of document or other material in the possession of the prosecution is entirely at the discretion of the Court having regard to the justice of the case. The discretion should not however be exercised so as to enable the accused to gain access to materials before the trial as in the case of pre-trial discovery and inspection of documents in a civil proceeding. The accused in a criminal trial should have sufficient notice of what is alleged against him so as to enable him to prepare his defence. So long as that requirement is satisfied the law is satisfied. The principle of justice was in fact emphasised by Hepworth J. in *Public Prosecutor* v. *Teoh Choon Teck* at page 35 where he said:—

"If there be any one principle of criminal law and justice clearer and more obvious than all others, it is that the offence imputed must be positively and precisely stated, so that the accused may certainly know with what he is charged, and be prepared to answer the charge as best he may."

The qualification, however, is also stated by the learned Judge in the same page with which we respectfully agree:—

"It will be observed that nowhere do sections 162, 163 and 164 say that the accused person is entitled to know the means by which the prosecution proposes to prove the facts alleged in the charge."

Where the application under section 51(i) of the Criminal Procedure Code is made in the course of the trial, the rule of relevancy must be strictly enforced. We feel that this is what *Mallal's* Criminal Procedure meant by saying that "anything which may reasonably be regarded as forming part of the evidence in the case may be ordered to be produced and that is the primary object of these provisions."

If the discretion is to be exercised before the commencement of trial the Court cannot anticipate how the prosecution will proceed. In other words the Court would not be justified to direct the prosecution to deliver to the accused all documents taken from him for that will not be a correct exercise of the discretion under section 51 of the Criminal Procedure Code. In the first place the accused should know what documents had been taken from him and to say that unless such documents were delivered for his inspection he would not be able to adequately prepare his defence cannot be a true proposition. A general demand for unspecified documents should likewise not be entertained. See *Anthony Gomez* v. *Ketua Polis Daerah, Kuantan*[7] and *Khoo Siew Bee & Anor.* v. *Ketua Polis Kuala Lumpur*[8] for another basis for the inspection and supply of the first information report and cautioned statement. Under section 51

of the Criminal Procedure Code the accused is most certainly entitled to have copies of documents which are specified in the charge. But the accused cannot be expected to be given access to all documents whatsoever taken by the police during investigation. In respect of application made in the course of the trial the materials or documents asked for must be relevant to the issues for adjudication.

The last question is whether it was proper for the appellate Judge to make a fresh order after setting aside the order under section 51 of the Criminal Procedure Code which he held had not been properly applied for. Why the appellate Judge decided to do so is explained in that part of his judgment which reads as follows:–

"Be that as it may, having perused the appeal record, I am of the view this is a proper case where I should exercise the Court's power of revision in order to ensure that justice is not only done but seen to be done. To my mind the charge as it stands is insufficient to enable the applicants to properly prepare their defence."

He also gave the reasons why it would be just and proper for the prosecution to furnish the accused with photostat copies of documents specifically referred to in the charge.

Was the appellate Judge here invoking his "inherent jurisdiction" referred to in *Ganga Ram* v. *Habib Ullah & Anor*[9] to call upon a person present in Court (in this case the Deputy Public Prosecutor) to produce the document? In this case the appellate Judge had already ruled that the respondent's application was not properly made under section 51 of the Criminal Procedure Code and therefore the order of the learned President should be set aside. The only question is whether it was a proper exercise of the revisionary powers of the appellate Judge.

Having regard to our view of section 51 of the Criminal Procedure Code the terms of the order made by the learned Judge would seem to be a contradiction in terms. We agree with the learned Deputy that what the learned Judge did was incorrect; it was neither an alteration nor a reversal of the order made by the learned President and therefore not authorised under section 316(c) of the Criminal Procedure Code. We are of the view therefore that the order of the learned Judge to produce the documents was not a proper exercise of his revisionary powers.

Therefore our answers to the questions posed are as follows:–

(1) The answer to question No. 1 is in the affirmative.

(2) The answer to questions No. 2 and No. 3 is in the affirmative with a qualification, that is, an accused person has a right to apply for a summons under section 51 of the Criminal Procedure Code but the issue of the summons is at the discretion of the Court before which the enquiry or trial is heard or pending. Where the application is made before the commencement of enquiry or trial as a general rule the documents or materials must be documents or materials specified or referred to in the charge. A general demand for unspecified materials or documents should not be entertained. Where the application is made in the course of inquiry or trial the court has to consider the question of relevancy to the issues for adjudication.

(3) Since the answer to question No. 2 is in the affirmative, question No. 4 need not be answered.

(4) The answer to question No. 5 is in the negative not because the contents of the documents formed part of the evidence of the prosecution but because the order made by the appellate Judge was not a proper exercise of his revisionary powers.

Questions answered.

Solicitors: *Joseph & Sons; Morris Edgar & Clough Thuraisingam.*

CHEO LEAN HOW v. FOCK FONG LOOI

[S.C. (Lee Hun Hoe C.J. (Borneo), Seah & Mohamed Azmi S.C.JJ.) February 7 & June 29, 1985]

[Kuala Lumpur – Federal Court Civil Appeal No. 283 of 1983]

Land Law – Temporary Occupation Licence – House built on land held under T.O.L. – Sale of house – Occupation by way of revocable licence – T.O.L. replaced by qualified title – Continued occupation by way of revocable licence – Whether licence irrevocable – Transfer by owner of land to another person – Revocation of licence – Reasonable notice.

Equity – Equitable estoppel – Irrevocable licence – Civil Law Act, 1956, s. 3(3).

In this case Too Sun the husband of the appellant was